THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 25828 of 2006

Dated: 13.12.2006

Between:

Y. Polaiah, S/o Y. Sunkanna, aged about 48 years, Occ: Conductor, E. No. 100571, R/o H.No. 81-5-53, Raghavendra Nagar, Kallur Mandal, Kurnool.

.... PETITIONER

AND

The Depot Manager, APSRTC,
Kurnool-II Depot, Kurnool and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 25828 of 2006

Order:

This writ petition is filed seeking a Mandamus declaring the action of respondent Nos.1 and 2 in issuing the proceedings dated 28.04.1998 and 13.02.1999 respectively, withholding the annual increment of the petitioner for a period of one year with cumulative effect, as illegal and arbitrary.

The petitioner is employed as a Conductor in APSRTC. He was issued a charge sheet, dated 02.04.1998, alleging that while conducting the bus, he committed certain cash and ticket irregularities on 23.03.1998, and that he was required to submit the explanation, as to why necessary disciplinary action shall not be taken against him, for which he submitted explanation denying the charges framed against him. Respondent No.1, without conducting any regular departmental enquiry and without affording any opportunity, passed the impugned order imposing punishment of withholding the annual increment for a period of two years with cumulative effect. Aggrieved by the same, the petitioner preferred an appeal before the 2nd respondent, and the 2nd respondent, by proceedings dated 13.02.1999, modified the said punishment to that of withholding of annual increment for a period of one year with cumulative effect. Hence, he filed the present writ petition.

Learned counsel for the petitioner contends that stoppage of increments of an employee with cumulative effect is a major penalty, and the same cannot be imposed without conducting regular departmental enquiry as contemplated under the APSRTC Employees' (CC&A) Regulations (for short 'the Regulations'). In support of his contention,

learned counsel relied on the judgment of the Supreme Court in "***Kulwanth Singh Gill v. State of Punjab***[1]".

On the other hand, learned Standing Counsel appearing on behalf of the respondents-Corporation vehemently opposed the said contention and submitted that though respondent No.1, after careful consideration of the entire evidence available on record together with the explanation submitted by the petitioner, has passed the impugned order imposing punishment of withholding the annual increment for a period of two years with cumulative effect, the 2nd respondent by taking a lenient view, modified the said punishment from two years to one year, hence, no reasons to interfere with the same.

Heard the learned counsel for both the parties and perused the material available on record.

It is an admitted fact that respondent No.1 imposed punishment of deferment of annual increment for a period of two years with cumulative effect, which was subsequently modified by the 2nd respondent to that of deferment of annual increment for a period of one year with cumulative effect, which is a major punishment. Admittedly, no regular departmental enquiry was conducted though the charge sheet was issued to the petitioner before imposing the penalty. The apex Court in "***Kulwanth Singh Gill's Case*** (1 supra) held that stoppage of increments with cumulative effect is a major penalty and it cannot be imposed without conducting the departmental enquiry. Since the punishment of stoppage of annual increment for a period of one year was imposed without conducting regular departmental enquiry violating the judgment of the apex Court, the impugned orders cannot be sustained.

In the ordinary course of things, the impugned orders need to be set aside leaving it open to respondent Nos.1 and 2 to pass fresh orders, but to avoid further litigation in the matter, I deem it appropriate to dispose of the writ petition with the following direction.

The impugned orders dated 28.04.1998 and 13.02.1999, passed

by respondent Nos.1 and 2 respectively, imposing punishment of stoppage of annual increment for a period of one year with cumulative effect, is modified to that of stoppage of annual increment without cumulative effect. The petitioner shall not be entitled to any monetary benefits arising out of this order, but shall be entitled to fixation of pay only.

Accordingly, the writ petition is disposed of. No costs.

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N.V. RAMANA, J.

Date: 13.12.2006
Nsr/Sj

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[1] 1991 Supp (1) SCC 504